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1951

File No. O.L.R.C. Bom /51 pt I

Legal Dept.

A **BRANCH**

Subject:— Opinions under the Bombay Land Revenue Code 1879

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Legal Department File No. O.L.R.C. Bom./51.

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Office of the R.L.A.

This reference does not involve the interpretation of any statutory provision of law, rule or order. It is only an executive order that is to be interpreted. As pointed out by R.D. in the concluding portion of their office note at p. 19 ante, it will be a question of fact in each case whether a particular act of stacking charcoal burning is in furtherance of a forest contract or not. The object underlying the orders issued in G.R.R.D. No.5578/33, dated 17-3-1937, ~~khaxmaxxmf~~ appears to be to remove one of the difficulties in the way of forest contractors. The extent of the concession granted by para 2 of the Government Resolution cannot be known unless the terms of the forest contract themselves are seen. Ordinarily the expression "in furtherance of forest contract" would suggest for the purpose of promoting the object for which the contract has been entered into No point of law is thus involved in this case and no opinion need be given in the matter. However, the line of argument at 'A' in the Agriculture & Forest Department note appears to be generally in order.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No.465, dated 8th January 1951.

EKN.23/6/

Legal Department.

R.D.No.23294/25-11-50.

Submitted.

2. It appears that the occupant of plot No.153 of Santa Cruz was granted non-agricultural permission on conditions stated in the agreement executed in 1905. According to the terms of the agreement the limit of the maximum built up area is 623 sq. feet which is to be built upon as p r plan attached to the agreement with the previous permission of the Collector. Under clause (a) the use of the plot (599 square yards) has been restricted to residential purposes. Part of this area was covered by a shed which was in accordance with the plan. This shed, it appears, is being used for a factory purpose since 1946-47. As the use of the structure for non-residential purpose was contrary to the terms, enhanced assessment under clause 3(ii) i.e. extra n.a.a. at Rs.20/- per 100 sq. yards, of the agreement was levied for a period of three years by the Collector under his letter dated 18.3.1949. The present Collector in view of the orders contained in G.R. R.D.No.1969/45 dated 14-7-1949 considers that n.a. assessment at the full rates current in the locality should be levied. R.D. states that as the rate of n.a. assessment has already been guarnnteed under the agreement it would not be lawful to levy n.a.a. at full rates until the expiry ~~xxx~~ of the term of the agreement. R.L.A. is requested to advise as to whether this view is correct.

EKN.23/6/

Office of the R.L.A.

Seen and returned.

The view taken by the Revenue Department is correct.

Sd/ P.M.Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No.838, dated the 13th January 1951.

EKN.23/6/

Office of the R.L.A.

The view taken by Revenue Department is not correct. Although the license fees are recoverable as arrears of land Revenue, they are not land revenue and consequently section 148 of Land Revenue Code would not be applicable and no penalty can be recovered. There would however be no objection to inserting as proposed by the Director of Excise and Prohibition a condition in the license for the recovery of a penal interest from the defaulter.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No.1015, dated the 16th Jaunary 1951.

EKN.23/6/

Office of the R.L.A.

E .bay Land Revenue Rules; Rules 74A and 74B; Kulkarni Inam Lands Shirad, Dist. West Khandesh Grant of- on new tenure.

Rule 74A of the Bombay Land Revenue Rules, 1921, provides for making an application for relinquishment of any service lands. Rules 74B provides that on receipt of such application, the Collector may, after holding an enquiry etc; and on being satisfied that the requirements of sub-rule (1) have been duly complied with, direct that the land shall, subject to any rights, tenures, incumbrances or equities (other than those of Government, the applicant and any other person consenting to the relinquishment) lawfully subsisting in favour of any person, be entered in Government records as unalienated unoccupied land, and the land shall thereupon cease to be land held for service. It is true that in the present case the mortgagee has stated that he has no objection to granting the land to applicant Pralhad Annaji on new tenure. But he has nowhere stated that he consents to the relinquishment of the land by the applicant Pralhad Annaji on new tenure. But he has nowhere stated that he consents to the relinquishment of the land by the applicant Pralhad Annaji. If so, his rights as mortgage would remain unaffected by the relinquishment of the land by Prahlad Annaji. If the relinquishment is accepted, it will have to be subject to the mortgagee's rights under rule 74B of the Bombay Land Revenue Rules. The view taken by the Revenue Department appears to be correct.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No.1019, dated the 16th January 1951.

EKN.23/6/

Office of the R.L.As

B. ...and Revenue Co. . sec.48.

Assessment of encroached portion of Municipal street land.

Gaothan lands never assessed before have been allowed to continue without assessment on the grounds of equity. However, such gaothan lands are village sites. In the present case the land is within the municipal limits and forms part of a street. Consequently the same equitable considerations would not apply to such land and there appears no objection to levying non-agricultural as essment on such land under G.R. R.D. No.2640/11885 dated 31-7-1945.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No.1181, dated the 18th January 1951.

EKN.23/6/

Office of the R.L.A.

Bombay Land Revenue Code,1879, sections 48(2) 66. Whether naa. assessment can be levied for use of S.No.6A of Kharde Bk. for tethering horses at the annual fair.

Survey No.6A of Kharde Bk., taluka Shirpur, which is an agricultural land was allowed to beused for tethering horses on the occasion of the horse bazar at the annual fair held in the village. The occupant recovered a rent of Rs.15/- at annas 8/- par each horse tethered. The question raised for consideration is whether on account of this use non-agricultural assessment can be levied under section 48(2) and fine imposed under section 66 of the Bombay Land Revenue Code,1879.

2. Under sub-section (2) of section 48 of the Bombay Land Revenue Code, 1879, where land assessed for use of for any purpose is used for any other purpose the assessment fixed under the Act upon such land is liable to be altered. Section 66 provides for the imposition of a fine in addition to the altered assessment leviable under section 48 if agricultural land is used for a non-agricultural purpose without the Collector's permission. In order to attract the provisions of these two sections the land must have been used for a purpose other than agriculture. Section 48 as it originally stood contemplated the case of a holder of land set apart for one purpose appropriating such land for another purpose. That section was interpreted by the High Court in Secretary of State vs. Laldas Naradas (12 Bom.L.R. 16) where Chandavarker J. held that the word "appropriated" conveyed the idea of setting apart a land for a partifular purpose in exclusion of all other uses. The defendant who used to let out his agricultural land for stacking timber during the seasons when it was not used for agricultural purposes was in that case held not liable to pay altered assessment. Section 48 was

therefore.....

therefore substituted by Bom.Act IV of 1913 and section 66 was also amended, the words "use" and "used" finding place instead of the words "appropriate" and "appropriated". In this case the land was used for tethering the horses and the occupant derived a profit therefrom. Since by permitting the land to be used for a purpose other than that considering which the assessment had been fixed, the occupant derived a profit, there would appear no objection to action being taken under sections 48 and 66 as proposes by the Collector of West Khandesh and to levying non-agricultural assessment on the portion of Survey No.6A which was actually used for the non-agricultural purpose.

Sd/ P. B. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No.1886, dated the 31st January 1951.

EKN.23/6/

Office of th R.L.A.

Bombay Land Revenue Code, 1899. section 217.

The question raised for the R.L.A's consideration is whether on the introduction of survey settlement in inam villages section 217 of the Bombay Land Revenue Code will apply to watan lands in such villages.

The point raised is covered by the Bombay High Court decision in Shriped v. Tuljaram (40 Bom.L.R.461) where it was held that "section 217 of the Bombay Land Revenue Code would not apply to watan lands which are governed by section 5 of the Bombay Hereditary Offices Act,1874, and the holders of such lands, if they are tenants, will remain mere tenants liable to their tenancy being terminated in the manner provided by the Court and they do not become occupants, and further the holders, if tenants, will not be raised to the status of occupants having a right to pay to the inamdar nothing more than the survey assessment. For in the former case there is a fixity of tenure and liability to pay a fixed amount by way of assessment, in the latter this is wanting. Section 217 does not take away any pre-existing legal rights between the parties. Where, therefore, there are previous contractual rights between the inamdar and the holder under him regarding the payment of the land revenue, these rights are not taken away even after the introduction of the survey settlement into the inam village." However, the Bombay Tenancy and Agricultural Lands Act1948, applies to all lands, including watan lands andconsequently if the holders of watan lands in such village, happen to be tenants, their rights would be governed by the provisions of the Bombay Tenacy and Agricultural Lands Act, notwithstanding the provisions of section 5 of the Bombay Hereditary Offices Act.

Sd/ P. M. Lad.

Remembrancer of Legal Affairs.

EKN23/6/ U.R. to R.D.No.1896, dated 31st January 1951.

Office of the R.L.A.

Bombay Land Revenue Code,1879,

Whether a building can be ordered to be demolished for breach of condition of Sanad regarding its use.

In this case a plot of agricultural land comprising pot-hissa No.1 S.No.147 of Chimthane, taluka Sindkheda, was permitted to be used for constructing a building under the Assistant Collector's order dated 2-7-1937 on the condition inter alia that the building erected on the plot shallbe used for residential purposes only. The holder of the plot constructed a new building in place of the one already constructed which he is using for the purposes of a hotel. The Collector of West Khandesh by his order dated 30/6/1950 has cancelled the permission to use the land for non-a ricultural purpose. The Collector seeks the sanction of Government to demolish the structure if the occupant does not do so on the service of a notice. The R.L.A. is requested to advise whether in view of the decision of the Civil Judge, Senior Division, Alibag, in Civil Suit No. 81 of 1948, the structure can be ordered to be demolished.

2. Clause 3 of the Sanad granted to the occupatn in respect of the non-agricultural use of the plot in question provides that the applicant shall erect and complete a residential house of a substantial and permanent description and shall comply in every respect with the building regulations contained in Schedule II to the Sanad. The condition embodied in that Schedule provides that the building erected on the plot shall be used for residential purposes only. Clause 6 of the Sanad which prescribes the penalty is as follows:-

"(6) Penalty clause. The Collr. may, without prejudice to an other penalty to which the applicant may be liable under the provisions of the said Code, direct the removal or alteration

of.....

any building or structure erected or used contrary to the provisions of this grant within a time prescribed in that behalf by the Collector and on such removal or alteration not being carried out witin the prescribed period, ma, cause, the same to kbe carried out and may recover the cost of carrying out the same from the appli ant an an arrear of land revenue."

It is clear from this clause that the Collector has power to direct the removal of the building used contrary to the terms of the sanad. As stated above the sanad only ~~authorikias~~ authorises the use of the building for residential purposes. By using it for a hotel the grantee has committed a breach of the sanad and the Collector would therefore be within his rights if he orders the demolition of the same.

5. The judgment of the Civil Judge, Senior Division, Alibag, in Kolaba C.S.No.81 of 1948, which is under appeal in the High Court has no bearing in this case as in that case permission to use the land for non-agricultural use had not been granted and therefore action was taken under section 66 of the Bombay Land Revenue Code. In this case the question is of the breach of conditions on which permission to make non-agricultural use of the agricultural to make non-agricultural use of the agricultural plot had been granted. Government circulars R.D.No. 4808/49 dated 31-5-50 and 19-10-50 which were issued in view of the judgment delivered by the Civil Judge Alibag, would be no bar in taking action in this case as proposes.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to R.D.No.1943, dated the 1st Feb1951.

Office of the R.L.A.

Bombay Land Revenue Code.
Section 175.

Bombay Land Revenue Rules.
Rule 129(1).

R.L.A's opinion No.5071 dated 28-5-1948

The decision of the Revenue Tribunal in case No.757(0/227 of 1941) appears to apply to sales held for the realisation of dues as arrears of land revenue and other sales held under rules 37(1),41,42 and 50(2) of the Bombay Land Revenue Rules and not to sales held for the realisation of land revenue proper; and replying on the words "so far as may be" in rule 129(1) the Tribunal in that case relaxed the rigour of section 175 on grounds of equity. The R.L.A's opinion No. 5071 dated 28-5-1948 would not therefore be effected by the aforesaid decision of the Revenue Tribunal so far as it relates to the interpretation of section 175.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to H.D.No.64 dated 2nd Jan 1951.

EKN.23/6/

Legal Department.

Bombay Land Revenue Code, 1879.

Section 40.

Under article IV of the merger agreement His Highness the Maharaja of Kolhapur is entitled to the full ownership, use and enjoyment of all private properties, as distinct from State properties, belonging to him on the date of this agreement. In para 3(g) of the forwarding letter to His Highness it is stated:

"As regards Sheri lands , we quite recognise your Highness's desire that those which have now been declared as your private property should be kept intact and should go from father to son. We are prepared to agree to this arrangement, but as Your Highness will no doubt realise, any laws applicable generally will also apply to these lands."

It is clear from these provisions that the property which has been recognised as the private property ~~xhixkxx~~ of His Highness the Maharaja of Kolhapur vests in him absolutely as full owner subject only to such laws as are applicable generally to such lands. Section 40 of the Bombay Land Revenue Code applies only to occupants. The full ownership conceded to the Maharaja under the merger agreement will imply not the ~~mere~~ mere grant of occupancy rights in the lands but the rights of a full proprietor. Consequently, section 40 of the Bombay Land Revenue Code will have no application to those lands. In the circumstances, Government will not be competenent to levy any royalty in respect of teak, balckwood and snadalwood trees in the Sheri lands which are recognised as the private property of His Highness the Maharaja of Kolhapur under the merger agreement.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to A. & F.D. No.2726 dated the 13th February 1951.

EKN.23/6/

Legal Department.

Cl[illegible]r higher n[illegible]-agricultural assessment as error had crept in the sanad.

Bombay Land Revenue Code,1879. Sects.65,66,138(1), 211.

It appears that a Sanad was issued in 1923 to Messrs.Allen Brothers & Co.(India)Ltd., Agents of Hattersley Mills and Chatkoper, permitting them to convert a site described in the Schedule thereto and indicated by the letter, A B C ED E F G H I J K and L on the site plan annexed thereto, for non-agricultural purposes. The rea of the plot was, in fact 101,709 sq. yards, but by mistake it appears that this area was stated in Sanad as 10170 square yards, and at a non-agricultural assessment at Rs.115-0-0 while, in fact, it should have been Rs.1144-4-0. This mistake was detected sometime in 1940 and was brought to the notice of Government. Since, however, there was some doubt regarding the ownership of the property and the Manager of the Hattersley Mills Co.Ltd. stated that the ownership of the mills vested in the Government of India with effect from 16-10-1940 the correspondence was carried on with the Central Government to ascertain the title. The Solicitor to the Central Government stated that the documents under which the property was to vest in the Government of India were not executed in view of the carious legal difficulties involved in the matter and requested that the matter might be kept in abeyance for sometime. In view of this letter orders were issued to the Mamlatdar to suspend the recovery of the non-agricultural assessment pending further orders. On 9 -3- 1950 the solicitor to the Central Government has informed the Bombay State Government that the possession of the Mills was given to the Government of Madhya Bharat and that an agreements of transfer had already been executed. It is, therefore clear that the property now vests in the Government of Madhya Bharat and the recovery of non-agricultural assessment in respect of this plot has been.....

been held in abeyance since the year 1940. The question raised for the R.L.A's consideration is whether the correct non-agricultural assessment can be levied with the effect from 1922 when the Sanad was executed and, if not, with effect from 1940 when the error came to the notice but was not rectified pending certain investigations.

2. It is true that the area, as mentioned in the Sanad, is a mis-description when the plot has been described in the plan annexed to the Sanad and on the basis of the correct area the non-agricultural assessment leviable would have been Rs.1,144-4-0 but, unfortunately, the Sanad states that the non-agricultural assessment was fixed at Rs.115/- during the fifty years commencing from the 1st August 1922. It is, therefore, clear that the mistake which has occurred in the measurement of the area as well as in the assessment of the non-agricultural assessment is purely a clericalerror and obviously this error must have occurred by reason of a mistake on the part of the Collector's office. It appears that before the Sandd was issued the Architects of the company in their letter dated 2-3-1922 (p.117 of the file) had brought the discrepancy in regard to area to the notice of them revenue authorities. The Bombay High Court has, however, repeatdly held that a Sanad issuedby Government in such cases is an agreement between the parties and is binding and section 211 of the Bombay Land Revenue Code has no application to such cases (44 B.L.R. 406). Consequently, unless and until the Sanad has been properly rectified by a suit under section 31 of the specific Relief Act,1877, it would not be possible for Government to levy non-agricultural assessment at the rate of Rs.1,144-4-0. Consequently, the question of levy with effect from 1940, much less with effect from 1922, will not arise.

3. If the Government of Madhya Bharat is agreeable to the rectification of the Sanad it would not be necessary to file a suit for the purpose. The Government of Madhya Bharat.....

Bharat should, therefore, be consulted and if it is agreeable to the rectification, the present Sanad calcelled and a fresh ne executed . If, however, the Madhya Bharat Government is not agreeable, the only course open to Government would be to file a suit for the rectification of the existing Sanad.

4. However, the Attorney General, who was recently consulted about the correctness of the view taken by the Bombay High Court, namely, that section 211 of the Land Revene Code cannot be resorted to in cases where the terms and conditions agreed to between Government and an occupant had been embodied in a document has advised that as the point is of considerable importance and raises a substantial question of law, it should be raised before the Sprement Court. In view of his advice and the equity of our claim. The R.D. if they so wish, may act under section 211 of the Land Revenue Code in this case and defend the matter, it taken to Court by the occupant. That may also provide and opportunity for getting the legal position as to Government's powers under section 211 authoritatively settled. If the R.D. take this couse, it will be open to Government, in view of the provisions of section 136(1) of the Code which makes the occupant primarily liable for land revenue including arrears in respect of the land, to recover the proper amount due dince 1922 from the Madhya Bharat Government.

Sd/

Additional Secretary to Government.

U.R. to R.D.No.3518,dated the 27th February 1951.

EKM23/6/

Office of the R.L.A.

Bombay Land Revenue Code,1879,section 79-A.
Transfer of Property Act,1882. Section 2 & 3.

It appears that a piece of land measuring 2a acres and 10 Gunthas out of Survey No.132-B of Bham Bur a has been granted to the Vijayanagar Co-op r a-tive Housing Society Ltd. on Payment of Occupancy price at the rate of Rs.5000/- per acre subject to the conditions laid down in Government letter No. 1856/p/44 dated 6th December 1946. Condition 4 of these conditions provides: "The Society or any member th reof shall not sell or in any way transfer by mortgage, lease etc., any of the plots formed out of the land to any person other than one of its members without obtaining the previous approval of Government." Condition 7 provides: " The society or any one in possession of the land through the Society shall be liable to be evicted from a plot in respect of which a breach of any of the foregoing conditions has occured without compensation of Government giving notice of the breach and the party concerned, failing to remedy it within six months of the date of the notice." The Society, it appears, has signed an agreement in form HH embodying these conditions and in addition, a condition of eviction under section 79-A of the Land Revenue Code for breach of any condition inserted in the agreement. This society has been formed on the tenant ownership model which prohibits the transfer or assignment by any member without the consent of the Society. It appears that some of the members who have constructed buildings have leased out for short periods. The questio raised for R.L.A's consideration is whether such leases would be in contravention of co 4 of the conditions subject to which Gove has granted land to the Society.

2. Section 10 of the Transfer of property Act prohibits conditions restraining alienation, but the transfer of Property Act does not apply to Crown grants and these gtants are subject to all provisions, restricitions, conditions and limitations ever contained in any such grant or transfer and shall be valid and taken effect according to their tenor etc. (see section 2 and 3 of the Crown Grants Act, 1895). All Crown Grants are to be construed strictly. Condition 4 of the conditions subject to which the grant has been made to the society in the present case provides that the society or any member thereof shall not sell or in any way transfer by mortgage, lease etc., any of the /;pts formed out of the land to any person other than one of its members without obtaining the previous approval of Government. This providion does not prima facie apply to the structures built on the land. It can be aruged that the lease of a structure built on the land includes lease of the land also and as such if the lease of the landitself is prohibited, the lease of the structure thereon would also be deemed to be prohibited. However, the words " in any way transfer" in condition 4 have to be read ejusdem generis with the word "sell" and consequently the prohibition of transfer by mortgage or leasse would extend to such transfers which are of a substantial nature. Consequently, the lease of the structures for short periods may not offend against condition.

4. Besides, if such lease for short periods is prohibited it would mean that the members who cannot occupy the buildings for short periods will have to keep them vacant which could not be the intention of Government nor of the Society. In Willington Cinema v. Performing Rights Society Ltd. 39 Bom. L.R. 654, it was held that: "A Court of construction

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ion 174 and 175.

There is no conflict between the view taken by the Bombay Revenue Tribunal and the view expressed by the R.L.A. in his opinion No.5071 dated 28th May 1958. The Bombay Revenue Tribunal's decision is correct in so far as it relates to the auction sale held for the recovery of dues which are recoverable as arrears of land revenue. That decision will have, therefore, to be followed in respect of such recoveries.

2. The sale of Government properties under rules 34(1) 41,42, and 50(2) of the Bombay Land Revenue Rules is required to be conducted as provided in rule 129. Such sales cannot be considered to be sales for recovery of land revenue. Consequently the decision of the Bombay Revenue Tribunal will apply to such sales and sections 174 and 175 of the Bombay Land Revenue Code can be relaxed in respect of such sales as pointed out by the Bombay Revenue Tribunal in its decision.

3. The words "so far as may be" in rule 129(1) of the Bombay Land Revenue Rules mean, to the extent to which they can be properly applied.

4. So far as the sales of properties for the recovery of land revenue are concerned, the provisions of section 174 and 175 will have to be considered as mandatory. Whether the present practice to relax the rigour of these provisions in cases where delay in payment of the 3/4th is not deliberate should or shouldnot be continue is a matter for the administ rative department to determine.

5. To make the intention clear, there would be no legal objection to amending rule 129(1) as suggested at 'A' on page 22 of the R.A.Office

Note...

Note but such amendment should be with respect to the sales for the recovery of dues other than land revenue sothat threre could be no conflict between such rule and the provisions of sections 174 and 175 of the Bombay LandRevenue Code. Clear instructions may be issued as desired by the Commissioner S.D. at page 5 of his letter that the decision of the Bombay Revenue Tribunal will apply only to sales for the recovery of dues other than land revenue.

Sd/P.M.Lad.

Remembrancer of Legal Affairs.

U.H. to R.D.No.2091. dated the 3rd February 1951.

EKN.23/6/

Office of the R.L.A.

The view taken by the Collector, Bombay, appears to be correct. The plot No.40 T.P.S.I. Bandra was allowedx to be used for non-agricultural purposes temporarily from time to time and in 1945 it was allowed to be used for a building purpose on a permanent basis. A Sanad was issued on 5th September, 1945, embodying the terms and conditions subject to which the permission for a permanen non-agricultural use was granted. It appears that at the time when the permission was granted, there was already a tin shed existing on the plot. Condition (2) of the Sanad provides that the applicant shall use the said plot only for building purposes of the nature specified in condition (3) of the Sanad. Under condition (3), the applicant is required to erect and complete on the said plot a bungalow and out house of a substantial and permanent description. The period during which the bungalow and outhouse were to be erected has not been specified in this condition. Even assuming that conditions (2) and (3) imple that the temporary tin shed should be removed and a bungalow and outhouse should be erected on the spot, it appears that the failure to erect such bungalow and outhouse andto remove the temporary tin shed would not constitute a contravention of the sanad inasmuch as no period during which the bungalow and the outhouse should be erected has been specified. It appears, therefore, that there has been no contravention of the sanad justifying any action under the penal clause for the removal of the temporary tin shed.

Sd/P.H.Lad.

Remembrancer of Legal Affairs.

U.O. to R.D.No.1695, dated the 29th January 1951.

EKN23/6/

Legal Department

A.&F.D. is presumably referring to revoery of value of trees etc. unauthorisedly appropriated under section 43 of the Land Revenue Code. The question whether this amount is to be credited to R.D. for Forest Department is an administrative matter and may be decided in consultation with R.D. or~~Rmmmxt~~ and F.D. No point of law is involved in this case.

Sd/

Additional Secretary to Government.

U.R. to A.& F.D.No.6696,dated the 26th April 1951.

EKN.25/5/

Office of the R.L.A.

Non-agricultural permission granted subject to conditions run with the land.
Land Revenue Code, 1879-sec.67.

The conditions on which the non-agricultural permission was granted were not in this case embodied in the sanad issued to the original occupant. The sanad does not contain any conditions subject to which the land should be utilised for non-agricultural purposes. But the memo. of conditions agreed to and signed by the original occupant prescribed certain conditions one of which provided that no subsequent additions to the building shall be made without the Collector's sanction. It is true that this condition was not included in the sanad but the Collector's order granting non-agricultural permission makes clear the conditions, on which the permission was granted and the non-inclusion of these conditions in the sanad would not make any difference. The original occupant had also signed an agreement subject to these conditions. Since the conditions attached to the occupancy while granting permission would run with the land the transfer of the land from the original occupant to the present occupant is subject to these conditions. Shrimati Dwarkabai, the present occupant, cannot, therefore, say that she was not aware of these conditions in the memo. of conditions. The view taken by the Collector in para. 5 of his letter No.LNDSR-II 61150, dated 27th May 1950 appears to be correct.

Sd/ J.R.D.

Remembrancer of Legal Affairs

U.R. to R.D.No.6194, dated the 17th April 1951.

EKN.26/6/

Legal Department.

The order passed by the City Deputy Collector on the 13th September 1943, revising the non-agricultural assessment in respect of Survey No.146/2 of Changispur under rule 80A of the Land Revenue Rules was declared to be invalid by the First Class Civil Senior Judge, Ahmedabad, in Civil Suit No.1585 of 1944. That order which is declared invalid by the Court is not resurrected by Bombay Act XXXV of 1948 which was to fill the Lacuna in the L.R. Code. Consequently, the City Deputy Collector's order dated the 13th September 1943 is not saved by the Bombay Act XXXV of 1948. If the non-agricultural assessment is to be revised, it will have to be done by a fresh order, and such order cannot be made retrospectively. (See Ahmedabad Ginning and Manufacturing Co.Ltd. Vs. Secretary of State for India in Council, 39 Bom. L.R.266).

Sd/

Additional Secretary to Government.

U.R. to R.D.No.6520, dated the 24th April 1951.

EKN25/6/

Legal Department.

Right over trees in Idar State area. Land Revenue. Code,1879. Sections 40.41.

By paragraph 3 of the Indian States (Application of Laws) Order, 1948, the Bombay Land Revenue Code,1879, was extended to the Idar State. By paragraph 5 enactment in force in the Idar State and corresponding to the Bombay Land Revenue Code extended to the State is repealed. It will therefore appear that from 28th July 1948, when the Code was extended to the Idar State, the Idar State Order, dated the 17th September 1947, will not have any effect in the State area and theplanter cannot be compelled torelinquish his rights over the trees in accordance with the State Order. The view taken by the Revenue Department in paragraph 4 of its note dated 23-1-51 is correct.

Sd/

Additional Secretary to Government.

U.R. to R.D.No.4290, dated the 15th March 1951.

EKN.25/6/

Legal Department.

Alteration of Commuted Value every ten years Regulation I of 1808.

The view taken by the R.D. is cor-rect. In appeal No.851 of 1925 in which Regulation I of 1808 was the subject-matter of interpretation by the High Court it was held that on perusal of sections 41, 43, (clause 3 of the stipulations of the deed recited in the Proclamations) and 45(clauses first and second) it is clear that there was a permanent settlement of the lands, andthe grain rental was foreover fixdd. The grain assessment was to be considered invariable to the present possessors and their posterity, and it was never to be changed or enhanced, whatever may be the quantity description or value of the produce of the soil, the increase or the augmentation of the value of which would, therefore, be the uninc-umbered reward of the industry, and good management of each proprietor. The grain rental was, therefore, ~~bexthexxmixexxmbexradxxxmrdxafxthexxindustryxxxandxxgxo~~ forever fixed subject to the then commutation at the rate of twenty rupees for Mudha, which was to remain in force for the next ten years, and continued to be liable to like fut re decennial fluctuations, reserving to the cultivators the option to deliver at all times the fixed number of Mudhas of paddy instead of money, in the event of their deeming it to be in any year over-valued. The sutidars, therefore, under the regulations, would be liable to pay forever the grain rental subject to any alteration in decennial valuation by Government." Government has not altered the cash value to the grain rental at the interval of ten years for last 150 years. Section 44 of the Regulation provides that the Governor-in Council reserves to himself, and to all further Governments, to rate and to fix anew, at the expiration of the said decennial period the commuted value that shall, in the current money of that time, as well as at the end of every successive decennial period, be deemed equal to the above-mentioned permanentaly stipulated produce. It will therefore be clear that under the Regulation of 1808, the Government has the right, but is under no obligation to revise the existing commutation value.

EKN.25/6/ U.O. to R.D.No.4048 dt.13th March 1926

Sd/ Additional Secretary to Govt.

Legal Department.

It appears that a net amount of Rs.5,164-2-11 is due from the Contractor Shri Ranchhod Vashram, and though his properties were put to auction on several occasions for the recovery of the dues, there was no bidder at all. The question raised for consideration is: whether the properties of the contractor can be purchases by Government for a nominal bid of Re.1/-

2. The question about the validity of auction-sale for a nominal bid of Re.1/- was considered by the Bombay High Court in Laduram Hajarimal Marwadi v.Ramrao Jankiram Kadam, (52 Bom.L.R.p.263). It was held in that case that, such auction-sale for a nominal bid would be valid provided a proclamation was issued that the defaulter's property would be sold on a nominal bid of Re.1/- without fixing any reserve bid and a due notice was given to the defaulter that if Government dues were not paid his property would be sold on a nominal bid of Re.1/- The High Court, however, remarked in that case that such sales for nominal amounts were extremely inequitable and it is desirable that Government in such cases should purchase the property for a reasonable price. It is, however, for Government to decide whether the observations of the High Court about the inequitability of such sales on nominal bids of the Rs.1/- should be respected or whether Government should stand on its legal rights and purchase the property on nominal bids of Rs.1/- If Government decides to follow the latter course the proper precautions of (1) giving a notice to the defaulter and (2) a statement to the effect that in the absence of bids the Government would bid for Re. 1 should be incorporated in the proclamation of sale and (3) no upset price is fixed.

Sd/

Additional Secretary to Government.

EKN.25/6/ U.R. to P.W.D.No.3808, dated the 7th March 1951.

Legal Department.

Non-Applicability of Rule 86-A when no standard rate has been levied under rule 82. Bombay Land Revenue Code, 1879-Rule 86.A.

The view taken by the Revenue Department is correct Under Rule 86-A of the Bombay Land Revenue Rules, 1921 graduated levy of non-agricultural assessment as provided thereunder can be imposed in cases in which the non-agricultural assessment fixed in accordance with the rate determined under Rule 82 in respect of land used for building purposes is revised and increased. Rule 82 provides for the levy of standard rates while Rule 81 provides for the levy of Ordinary rates of non-agricultural assessment. Rule 80-A provides that "on the expiry of the period for which the assessment of any land assessed or held or used for any non-agricultural purpose has been fixed the assessment shall berevised by the Collector from time to timein accordance with the rules containe in this chapter." It appears that the plots in the Bombay Suburban District are goverened by the old Agreements under which a fixed amount of non-agricultu ural assessment has been prescribed for a period of 50 years. Consequently on the expiry of that period it can be revised as provided in Rule 81 or 82 according as it is the ordinary rate or the standard rate proposed to be levied. Rule 86-A can be resorted to only when the non-agricultural assessment fixed in accordance with the rate determined under Rule 82 is revised and increased. In the case of the plots in Bombay Suburban District no such standard rate has been levied under Rule 82. If so, Rule 86-A cannot be resorted to and no graduated levy of non- gricultural assessment as provided thereunder can be ordered. It is true that the Bombay Revenue ~~xxxxxxxxx~~ x Tribunal has stated in Appeal Petition against Order No.LND.17/54. dated the 21st February 1950, to the Collector of Bombay

suburban.....

Suburban District that,....."the Collector should have revised or levied the non-agricultural assessment after that date interms of Rule 86-A of the Land Revenue Rules," : but it appears that the Revenue Tribunal did not notice that the standard rate was not at all levied on the land under rule 82. Therefore, the view expressed by Revenue Tribunal does not appear to be correct and when a similar point is raised before the Revenue Tribunal in any other case the non-applicability of Rule 86-A in cases where no standard rate has been levied under Rule 82 should be brought to the Tribunal's notice. In the meantime this may be brought to the notice of the Senior Deputy Secretary, R.D. who is an ex-officio member of the Tri-bunal he can also see that the correct legal position is not lost sight of.

Sd/

Additional Secretary to Government.

U.R. to R.D. No.6184, dated the 17th April 1951.

EKN.25/6/

Legal Department.

The question raised for the consideration of the R.L.A. is whether section 65 of the Bombay Land Revenue Code,1879, applies to an Inam Land in a Khalsa village and Collector's permission is necessary for putting such land to a non-agricultural use. The question arises in the following circumstances S.No.254 of village Zadagaon, a Khalsa village in the Ratnagiri taluka, is Jat Inam standing in the name of Shri J.D. Kher and others. One Mahadwala who has purchased the permanent tenancy right of the land, constructed a building on the land without obtaining permission under section 65 of the Bombay Land Revenue Code 1879. Shri Mahadwala contends that as the land is Jat Inam no such permission is necessary. The Prant Officer considers that such permission is necessary while the Collector of Ratnagiri is of the opposite view. According to the Collector neither rules 92 to 98 of the Land Revenue Rules which apply to surveyed and settled alienated villages nor section 217 of the Code which applies to alienated villages and not to alienated survey numbers are attached.

2. The question whether section 65 and sections following apply to alienated lands has been considered by the R.L.A. in the past on more than one occasion. Attention is invited to R.L.A's opinion No.7107, dated 9th December 1935, in which the R.L.A. expressed the view that section 65 to 67 did not apply to Inam or alienated lands; and that section217 of the Code had not the effect of overriding the contractual relations between the Inamdar and his tenants. The question then before Government was to amend the Code with a view to arining themselves with power to control building operations in Inam or alienated villages. The R.L.A. therefore suggested the undertaking of legislation. In his subsequent opinion No. 6398, dated 20th November 1936 when he was asked to reconsider the earlier opinion of 1935, the R.L.A. stressed the restricted scope within which sections 65 to 67 could be made applicable by virtue of the provisions of sec.217 of the Code.

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That opinion of the R.L.A. was unheld by the Advocate General (vide his opinion No.14 dated March 1940. It seems that the Prant Officer who considered that permission of the Collector under section 65 was necessary based his view on theruling of the Bombay High Court in Bai Kaba vs. Ramanik-lal Sundarlal, 42 Bom. L.R.747, where Beaumont C.J.held that section 65 applied lands in alienated villages which had been surveyed and settled. The above opinions and the ruling were considered by the R.L.A. in his opinion No.9785, dated 8th November 1940. The question considered in that opinion was about the enforcement of the condition regarding 30 feet distance for the constructions of buildings in Inam lands and lands in Inam villages. The R.L.A. pointed out that such lands fell into the following three classes:-

(1) Alienated lands in Khalsa or r ayatwari villages;

(2) lands in alienated villages to which survey settlement has been applied.

(3) lands in alienated villages to which survey settlement has not been applied.

The R.L.A. confirmed the view that section 65 and 67 would not apply to lands referred to at serial Nos.1 and 3 above. As regards lands at serial No.2 above the R.L.A. referring the to the decision in 42 Bom.L.R. 747 expressed the view that rules 92 to 98 of the Land Revenue Rules would apply. However this point is not material for the purpose of the point referred to. The gist of all the opinions is that section 65 to 67 cannot be said to apply to alienated lands in Khalasa villages. As the survey number referred to in the Collector's letter falls within this category, the contention of the tenant Shri Mahadwala and of the Collector of Ratnagiri appears to be correct. The reliance placed upon 42 Bom.L.R.747 by the Prant Officer., Ratnagiri, is not proper.

Sd/

Additional Secretary to Government.

U.R. to R.D.No.,6236, dated 17th April 1951.

EKN.25/6/

Legal Department.

Irregular grant of land- Agreement in Forms F or H Land Revenue Code 1879.

Rule 42(2)of the Land Revenue Rules, 1921 requires the grantee of such land to pass an agreement in Form F or H as the Collector may deem fit. Under the standing Orders Government lands either for agricultural or non-agricultural use should be disposed of by auction and if disposed of without auction reasons should be recorded. In the present case land was granted to Shri Dosumiya on payment of the occupancy price. No agreement appears to have been t aken from him as required by rule 42(2); nor the Asastant Collector has given any reasons for grant of the land without public auction. The grant being irregular the Collector rightly ordered the cancellation of the grant ordering refund of the occupancy price paid by Shri Dosumiya. (See R.L.A's opinion No.16 dated 2-1-47; No.2102 dated 2-3-48). The sale of the land by the grantee to Adambhai Adalbhai was subject to the right, title and interest of the grantee. The transferee cannot have greater title than the grantee has. Government may, therefore, take steps to recover possession of the land from the transferee or his successor. Since the transferee has made some improvements on the land the transferee, on equitable grounds, may be granted compensation after assessing the same through Government Officer (See R.L.A's opinion No.8569 dated 23-8-47), before he is evicted from the land. In the case of land at Vadhrad village of Prantij taluka it has been decided to file an appeal to the High Court against the decision of the Second Extra Asstt. Judge, Ahmedabad, in C.A.No. 19 of 1949. The view expressed above would, therefore, be consistent with the policy adopted by Government in this appeal, and the R.L.A's opinions referred to above.

Sd/

Additional Secretary to Government.

U.R. to R.D.No.7362 dated the 8th May 1951.

EKN.25/6/

Legal Department.

The plots are sold out as Government plots subject to the condition No.6 that they should be built upon within 1½ years On 16-4-1948 Narandas Bhanabhai and others applied for extending the time limit for the consturction of buildings till such time as building materials are available. This application was granted and they were asked to ~~build~~ build whenever it is convenient. If the application is read with the order it would appear that the extension is granted only till such time as the building materials are available. In view of this position there is no objection to Government informing the plot holders that the building materials being available they should start constructing the buildings within say a period of one year failing which their grants would be cancelled and plots resumed.

Sd/

Additional Secretary to Government.

U.R. to R.D.No.7624 dated the 14th May 1951.

EKN.25/6/

Legal Department.

The Bombay Land Revenue Code,1879 was extended to the Cambay State by Para 3 of the Indian States (Application of Laws), Order,1948 with effect from 28-7-1948. Consequently the Cambay Code which corresponds to the Bombay Land Revenue Code was repealed from that date. It is presumed from the Statement of the appellant at A of his appeal memo that the Cambay Code contained a provision similar to section 211 L.R.C. vesting the powers of revision in the Board Revenue. If so, it would be competent for Government to modify the order of the Revenue Minister under section 211 of the Bombay L.R.Code asking the applicant to take out a licence in form JJA under the new rule 47-B.

Sd/

Additional Secretary to Government

U.R. to R.D.No.7518 dated the 12th May 1951.

EKN.25/6/

Legal Department.

In view of the doubtful position as to whether Mrs.Mary Angelia Creado was a tenant or trespasser, the R.L.A. in his last opinion No.17291. dated the 6th December 1950, opined that it would be safer to give her a notice terminating the lease before evicting her. It appears she was however evicted on 25th October 1950 without any such notice. She does not appear to have taken any action so far for restoration. In the circumstances, the second alternative proposed by the Revenue Department may be followed and in case she takes action for restoration, it may be defended on the ground that she was at the most a bare licensee and by the notice given to her under section 202 of the Land Revenue Code the licence was deemed revoked and her eviction was lawful.

Sd/

Additional Secretary to Government.

U.O. to P. & S.D.No.7992, dated the 21st May 1951.

EKN25/6/

Legal Department.

The Land Revenue Code, 1879 -

Secs.37,38,211.

It appears that S.Nos.444,445 and 446 of Chala, taluka Pardi were assigned for grazing under section 38 of the Bombay Land Revenue Code. On the request of some residents of this village, the Collector made a proposal to the Commissioner that these lands should be exchanged for Survey Nos.339,395,401,402 and 404 of Shri Gulabchand Mulchand which had been consented to by him and the latter lands should be assigned for grazing purposes. The Commissioner, by his order dated 10th July 9148, accorded sanction to the Collector's proposal with the result that Survey Nos.444,445,and 446 were given to Shri Gulabchand and Survey Nos.399,395,401,402 and 404 were entered in Government records as Government waste lands and assigned for grazing. ~~(Some of the villagers consider that the lands and assigned for grazing.)~~ Some of the villagers consider that the lands now assigned for grazing are not advantageous and the lands which were originally assigned for grazing should be now assigned to them instead of the lands taken from Shri Gulabchand in exchange. Twice Govemment turned down the request of the villagers. They have again made a request to Government and the Collector now recommends that it would be more to the advantage of the villagers to cancel the exchange of lands sanctioned by the Commissioner in 1948. The question raised for the R.L.A.'s consideration is whether it would be legally feasible for Government to set aside the exchange of Gurcharan lands sanctioned by the Commissioner in 1948.

2. The effect of the Collector's order sanctioned by the Commissioner in 1948 was (1) to revoke the assignment for grazing, of Survey Nos.444,445,and 446 ;(2) to exchange those lands for survey Nos.399,395,401,402 and 404 of Gulabchand and (3) to assign the lands of Gulabchand taken in exchange, for grazing. Assignment of land under section 38 for any particular purpose can be revoked

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...y time by the Revenue Officers. (See Gupte's Land Revenue Code, p.192). The assignment and dis-assignment of lands for grazing purposes would not, therefore, present any difficulty to the setting aside by Government of the exchange of Gurharan lands sanctioned by the Commissioner in 1948. The main difficulty would relate to the rights of Gulabchand, if any, created by the exchange. Under section 37 of the Bombay Land Revenue Code the Collector has the power to dispose of Government land. This power of disposal includes power to exchange (Government lands for private lands for such exchange amounts to sale with the only difference that the consideration paid by the vendee is in the form of lands and not cash. Consequently, the order of the Collector sanctioned by the Commissioner in 1948 in the present case would in effect fall under section 37. The exchange of lands is not evidenced by any document executed between the parties i.e. between Government and Shri Gulabchand. There is, therefore, no contractual liability subsisting between Government ~~of India~~, and Shri Gulabchand. (See section 175(3) of the Government of India Act, 1935). The orders passed by the Collector under section 37 regarding the disposal of Government lands are subject to the powers of revision of Government under section 211. It would, therefore, be competent for Government to revise the order of the Collector and to set it aside. It is true that Government in the past had twice rejected the request of the villagers to set aside the exchange but such rejection would not create any vested right in Gulabchand and it would be open to Government to revise the order of the Collector if it is convinced that the Collector's order is not proper. In the circumstances, there appears no legal objection to Government setting aside the exchange order of the Collector sanctioned by the Commissioner in 1948.; but Govt. will have to pay Shri Gulabchand the costs of improvements, if any effected by him.

Sd/

Additional Secretary to Government.

U.R. to R.D.No.7010, dated the 3rd May 1951.

EKN.25/6/

The Land Revenue Code.Sec.79A. 202.

It appears that in Civil Suit No.81 of 1948 the Civil Judge, Senior Division, Kolaba, held that the unauthorised structures cannot be removed under section 66 of the Land Revenue Code although the occupant could be evicted. The appeal against that decision is pending in the High Court. The R.L.A. in his opinion No. 6820, dated 19th May 1950 advised that Government should refrain from taking steps for removal of such offending structures until the question raised in the Kolaba Civil Suit is finally decided. In view of that opinion Government issued a circular No.48108/49, dated 31st May 1950 directing that pending the result of the appeal in that suit, where eviction is sanctioned by Government, the unauthorised structure should not be demolished; but that they should be treated as Government property and leased out as such. The R.L.A. in his opinion No.13019, dated 12th September 1950 opined that after eviction the plot will vest in Government and Government would be free to lease it to the existing tenants. The Collector of Nasik has raised the following two points:-

(1) whether after the occupant is evicted and unauthorisied structures are taken over as Government property in accordance with the above mentioned orders, such property fully vests in Government; or whether Government would act in such cases as agents or trustees of the occupant in respect of the property;

(2) whether in cases where the Collector is empowered to direct removal of an unauthorised structure in accordance with the penalty clause provided in the Sanads, removal or demolition of the unauthorised structures can be restored to without eviction of the occupant.

Question No.1.- Under section 79A read with section 20 of the Land Revenue Code the Collector can order the

eviction.....

eviction of a person wrongfully in possession of land. Nor doanay of the sections of the Land Revenue Code providing for eviction provide that after eviction the person soevicted shall have any rights left in the land from which he has been so evicted. The evicted person will have, therefore, to be deemed to be in wrongful possession of the land and on his eviction he can have no claim to the land or the structures thereon. Consequently, the property, on eviction, would vest in Government and Government cannot be considered as an agent or a trustee of the occupant who has been evicted.

Question No.2:- If the Sanad itself provides for the removal of the unauthorised structures, there would be no legal objection to the removal of such unauthorised structures. The decision of the Senior Civil Judge, Kolaba in the aforementioned case will have no application, for the Sanad would constitute an agreement between the parties and in it would be competent for Government to enforce the provisions thereof.

Sd/J.R.D.

Remembrancer of Legal Affairs.

U.R. to R.D.No.8540, dated 31st May 1951.

EKN.25/6/

Office of the R.L.A.

Use of Timber yard for building.

Bombay Land Revenue Code, 1879. Sections 48(4) and 66.

In the Sanad which was issued in the present case the permission was granted for the use of the land for being used as a timber yard. It is true that the Sanad also contains word "not for building". But this would not be held as amounting to the prohibition of the use of the land for the purpose of building within the meaning of section 48(4) of the Bombay Land Revenue Code, 1879. In the circumstances eviction under section 48(4) will not be feasible and the only possible action is the levy of altered assessment. (Cf.I.L.R. 42 Bom.126). As the alteration of the use for a building purpose took place after the land was allowed to be used for a non-agricultural agricultural purpose, section 66 of the Bombay Land Revenue Code is also inapplicable (I.L.R.39 Bom.494.)

Sd/ J.R.D.

Remembrancer of Legal Affairs.

U.R. to R.D.No.9393, dated the 13th June 1951.

EKN.25/6/

Office of the R.L.A.

Levy of composition fee for unauthorisied structure.

Bombay Land Revenue Code, 1879. Sections 65 & 66.

It appears that Shrimati Esterbai, wife of Bhaskar Shirsat, made a prohibited construction in survey No.5/9/1-2/2 of Bapodi in contravention of the conditions of the Sanad dated 18th May 1921 issued under section 65 of the Land Revenue Code. After enquiry the Collector passed an order directing the eviction of the occupant, but before the possession of the land could be taken the occupant removed the unauthorised construction. In view of this the Collector proposes to cancel the eviction order and to levy a composition penalty to recover the non-agricultural assessment. R.D.considers that the Collector's proposal would not be legally feasible, but under condition 3, sub-xcondition (ii) of the Sanad the Collector can levy an enhanced assessment if and when he permits theoccupant to appropriate the land to such use as is prohibited under that condition. The R.L.A. is requested to advise.

Since the land was allowed to be appropriated to non- grioultural use under the Sanad the conditions thereof would be relevant for the purposes of determining the liability of the occupant. The fact that the occupant has removed the prohibited structure before she could be actually evicted from the land would not prevent her eviction even after the removal of the structure by her, though that may be rather harsh. Section 66 of the Land Revenue Code would not be available for the levy of a fine, as the occupant had taken permission under section 65 to convert the land to a non-agricultural use. Condition 3 sub-condition (ii) of the conditions of the Sanad empowers the Collector to levy enhanced assessment when any such prohibited use is permitted by the Collector. The levy of such enhanced assessment would arise only when the collector permits any such probibited

use.....

use. There being no provision in the Sanad for the levy of any fine in the circumstances of the present nature it would not be competent mfor the Collector under the Sanad to levy any enhanced assessment or to demand any composition fee.

Sd/ J.R.D.

Remembrancer of Legal Affairs.

U.R. to R.D.No.8614, dated the 1st June 1951.

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Legal Department.

The view taken by the Revenue Department that the Collector's proposal to evict the occupant and to regrant the land and the building to the occupant on payment of occupancy price equal to Rs.1300 would be legally feasible, is not correct. The only condition which has been broken by the occupant is condition 1 of the Kabulayat that five feet open space must be left all ro nd the building. There is not provision in the Kabulayat prescribing any penalty for the breach of this condition. This condition cannot be considered to be a condition annexed to the tenure of the land, particularly when the penalty of forfeiture has been provided for the breach of condition No.5. R.D.appear to be of the view that section 48, sub-section (4), of the Bombay Land Revenue Code,1879, can be resorted to toe vict theoccupant for breach of condition 1. That sub-section provides: " The Collector or a survey officer may, subject to any rules made in this behalf under sction 214, prohibit the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict the holder who uses or attempts to use the same for any such prohibited purpose." Sub-section (1) provides: that the land revenue leviable on any landunder the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land--

(a) for the purpose of agriculture,

(b) for the purpose of building, and

(c) for purpose other than agirculture or building.

Sub-section (2) provides that where land assessed for use for any purpose is used for any other purpose the assessment fixed under the provisions of.....

of this Act upon such land shall,.....
etc. be liable to be altered. Purposes contemplate for fixing the assessment under section 48 are--

(1) purpose of agriculture ,

(2) purpose of building, and

(3) purpose other than agriculture or building.

Considering the purposes mentioned in this section, it appears that purposes contemplated under sub-section (4) are the aforesaid purposes. In the present case the land was allowed to be converted to be used for building purpose. The fact that the occupant has committed a breach of condition No.1, namely the use of the open margin of five feet for a building purpose involves no alteration in the purpose. Consequently, sub-section (4) of section 48 cannot be resorted to and it would not be legally feasible for the Collector to evict the occupant for the breach of condition 1.

Sd/

Additional Secretary to Government.

U.R. to R.D.No.8516,dated the 30th May 1951.

EKN.25/6/

Office of the R.L.A.

Re:Sale or transfer of plots or Vijayanagar Co-operative Housing Society.

R.L.A's opinion No.286-Confl. dt.15.3.51.

In his last opinion No.286 Confl. dated 15th March 1951 the R.L.A. opined that conditions subject to which the land is granted to Vijayanagar Co-operative Housing Society, Poona does not prohibit transfers of a temporary nature, such as leases of short period of structures built on the land. In view of that opinion the replies to questions (a) and (b) raised by the R.D. in para 2 of its office note at page 37 ante would be in the negative. Since as stated above, condition 4 does not prohibit short term leases such short term leases of land even could not be prohibited The reply to question (b) would, therefore, be in the negative.

2. It is very difficult to say what is a short term lease and what is long term lease. What the R.L.A. intended in his last opinion was that leases of a temporary nature, with a view to avoid the building falling vacant by reason of the lessee members being unable to occupy the premises, would be permissible under condition 4. This would be a question of fact. However, to obviate this difficulty it would be desirable that the Society should make a provision in the rules and by-laws prescribing the maximum period for which a member can lease on the ground of his being unable to occupy himself.

3. Condition 4 of the conditions subject to which the land was granted to the Vijayanagar Co-operative Housing Society, Poona, requires the previous approval of Government to the sale or transfer by the Society or any member thereof by mortgage, lease etc. any of the plots formed out of the land. Clause 2, sub-clause (14) of the form of lease executed by the Society and its members at page 87 ante requires the previous consent of the society to the assignement or under-letting....

under-letting or parting with the possession of the demised plots and premises by the lessee at any time during the term. If the lessee member wants to lease the permises for a long term he will necessarily require the previous permission of the Society under clause 2, sub-clause (14), which in turn will have also to seek the previous approval of Government under condition 4 of the conditions subject to which the land has been granted by Government to the Society. Under clause 2, sub-clause (14) the Society can claim half the amount or value of any premium and other consideration received by the lessee for the transfer, a portion of which consideration can be demanded by Government for giving its approval under condition 4. The view taken by the Under Secretary, R.D.in this respect appears to be correct.

Sd/ J.R.D.

Remembrancer of Legal Affairs.

U.R. to R.D.No.491-Confl. dated the 25th May 1951.

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12223/9-6-1951.

Submitted with reference to R.D. office note at p.5 ante. Certain Barkhali lands (in the Kamraj taluka of the merged Baroda State) were standing in the name of one Dayashankar Narushankar who died on 16th September 1949 leaving behind him a widow, mother and a daughter. When the question arose as to in whose name the lands should be entered in Govt. records the Prant Officer, Surat, ordered the name of the daughter under the guardianship of the mother to be entered; in appeal preferred by the deceased's mother, the Collr. of Surat by his order dated 26th August 1950 ordered that the lands should be entered in the joint names of the widow andthe mother. The Barkhali Assistant Baroda, inviting attention to para. 8 of Schedule "ड" to the Baroda Land Revenue Rules which contains the rules relating to the mutation of Barkhali lands, proposes that the Collr's order should be cancelled by Govt. as according to that Schedule the proper heir to succeed to the Deceased Inamdar is the widow and not the mother.

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There is no objection to giving effect to the proposal made by the Barkhali Assistant, Baroda, and entering the lands in the name of Bai Bhadrakanta in the Government records.

Sd/J.R.D.

Remembrancer of Legal Affairs.

U.R. to R.D.No.10064, dated the 25th June 1951.

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Office of the R.L.A.

Eviction for unauthorised user

Land Revenue Code, 1879 Section 66.

Seen and returned.

The view taken by R.D. is correct. Action under section 66 of the Land Revenue Code would be legally feasible in cases where the non-agricultural use of the land is continued after the expiry of the prescribed period (see G.R.R.D.No.5887/33, dated 16.2.1932; Gupte's L.R.C. 3rd Edition p.463); and the Bombay Rent Control Act would be no bar to the eviction of the tenants under section 66, L.R.C. However until the appeal in the Kolaba case is disposed of by the High Court the buildings should not be demolished although there is no objection to evicting the tenants and occupants under section 66 of the Land Revenue Code.

Sd/ J.R.D.

Remembrancer of Legal Affairs.

U.R. to R.D., No.10517, dated the 3rd July 1951.

EKN.25/6/